

AUDREY STRAUSS

United States Attorney for the
Southern District of New York

By: BRANDON H. COWART

Assistant United States Attorney

86 Chambers Street, 3rd Floor

New York, New York 10007

Telephone: (212) 637-2693

Facsimile: (212) 637-2686

E-mail: brandon.cowart@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMY BATES, derivatively on behalf of the
Unites States of America,

Plaintiffs,

-against-

DONALD J. TRUMP, in his personal capacity,

Defendant,

-and-

THE UNITED STATES OF AMERICA,

Nominal Defendant.

NOTICE OF REMOVAL

from the Supreme Court of the State
of New York, County of New York,
Index No. 150631/2021

The United States of America (“United States”), by its attorney, Audrey Strauss, United States Attorney for the Southern District of New York, hereby removes the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows.

Pleadings and Proceedings to Date

1. On January 19, 2021, plaintiff Jeremy Bates, purportedly on behalf of the United States and its citizens, commenced an action against then-President Trump and the United States, as a nominal party, in the Supreme Court of the State of New York, County of New York, by

filing a Summons and Complaint, Index No. 150631/2021 (the “State Action”). A true and correct copy of the summons and complaint (“Cmpl.”) is attached as Exhibit A.

2. Plaintiff alleges that as President of the United States, President Trump owed fiduciary duties of candor and due care to the United States and its citizens. *See* Cmpl. ¶ 12. These fiduciary duties allegedly are analogous to those fiduciary duties an executive of a private corporation owes to the corporation and shareholders he or she serves. *Id.* ¶¶ 3-5. President Trump purportedly failed to honor these fiduciary duties he owed to the United States in exercising his official authority as President of the United States. *See, e.g.* Cmpl. ¶¶ 79, 86, 106, 111-14, 162.

3. Plaintiff seeks monetary damages on behalf of the United States, specifically compensatory damages of \$150 million, as well as damages for losses to the United States’ reputation caused by President Trump’s alleged breach of his fiduciary duties, and punitive damages of \$1 billion. Plaintiff also names the United States as the “nominal defendant” in this action.

Grounds for Removal

4. Removal of this case is authorized under 28 U.S.C. § 1441(a). Section 1441(a) states that “any civil action brought in a State court” over which federal district courts “have original jurisdiction, may be removed by the defendant or the defendants, to the” associated district court. The United States District Court for the Southern District of New York has original jurisdiction. First, the State Action purports to have the United States as both a plaintiff and defendant. *See* 28 U.S.C. §§ 1345, 1346. Second, the State Action raises the federal question of whether a private citizen can bring suit on behalf of the United States in the absence of express statutory authority to do so. *See* 28 U.S.C. § 516 (“Except as otherwise authorized by law, the

conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.”). Third, the consent of each defendant to removal is not necessary. Filings in the State Action evidence service only on the United States. There is no indication in these filings that defendant Donald J. Trump has been served with the summons and complaint. *Id.* A “well-established” exception to the unanimity requirement is “where one or more defendants has not been served with the initial pleading at the time the removal petition was filed.” *Busby v. Cap. One, N.A.*, 932 F. Supp. 2d 114, 127 (D.D.C. 2013).

5. Removal of this case is also authorized under 28 U.S.C. § 1442(a)(1). Section 1442(a)(1) provides that “[a] civil action . . . that is commenced in a State court” may be removed to the associated federal district court if it is “against or directed to . . . [t]he United States or any agency thereof” The scope of removal under Section 1442(a) “is not narrow or limited.” *Cuomo v. Crane Co.*, 771 F.3d 113, 115 (2014) (quoting *Willingham v. Morgan*, 395 U.S. 402, 406 (1969)).

6. As an initial matter, the Complaint names the United States as the “nominal defendant” in this action. Accordingly, as this action is brought “against” the United States, removal under Section 1442(a)(1) is proper.

7. Plaintiff also apparently seeks to bring this action on behalf of the United States, in a derivative fashion, to establish certain rights of the United States vis-à-vis the President of the United States. Cmpl. ¶¶ 4, 12. Plaintiff proposes that citizens be permitted to bring suit on behalf of the United States to vindicate these rights. *Id.* ¶ 13, 14. The lawsuit is therefore “directed to” the United States within the meaning of Section 1442(a)(1).

8. Removal pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1442(a)(1) is timely under 28 U.S.C. § 1446(b). Section 1446(b)(1) authorizes removal “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” 28 U.S.C. § 1446(b). The State Action was commenced in the Supreme Court of the State of New York, County of New York, on January 19, 2021. The United States was made aware of this action on February 17, 2021, when service of the Complaint was made on the U.S. Attorney’s Office – Southern District of New York. Because this removal is within 30 days of the date that the United States received the Complaint, it is timely.

9. The United States will promptly file a copy of this Notice of Removal with the Clerk of Court, Supreme Court of the State of New York, County of New York.

10. No previous application for removal of this action has been made.

11. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all the above process, pleadings, and orders served on the United States in this action are collected and attached as Exhibit A.

12. The submission of this notice of removal is solely for the special purpose of removing this action to the appropriate federal court and is not a general appearance by the

United States. This submission does not constitute a waiver of any defense available to the United States, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
March 18, 2021

AUDREY STRAUSS
United States Attorney for the
Southern District of New York
*Attorney for the United States of
America*

By: /s/ Brandon Cowart
BRANDON H. COWART
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2693
E-mail: brandon.cowart@usdoj.gov